

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a county engineer testifies that the applicant may need to acquire “vision easements” if necessary and the county imposes a condition of approval to that effect, the county is not required to adopt a finding that it is “feasible” for the applicant to obtain such easements from neighbors, absent some indication that there is a legal or practical impediment to obtaining the easements. *Gardener v. Marion County*, 56 Or LUBA 583 (2008).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where the petitioner raises a number of issues, some directed at a remanded decision that is not before the city, and others at the application that is before the city, and the city prudently adopts findings addressing all issues raised, the findings that address issues regarding an application that is not before the city are surplusage and not binding on the city or parties, and LUBA will not address challenges to those findings. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

1.5.1 Administrative Law - Requirement for Findings - Generally. Provided local law does not dictate a different result, local governments generally may approve a proposed development of land after providing any required notice and hearings—without finding that the proposal complies with all relevant approval criteria—so long as the local government defers the required findings to a later stage and ensures that a second opportunity for any required notice and public hearing is provided before the required findings are adopted at that later stage. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

1.5.1 Administrative Law - Requirement for Findings - Generally. It may not be appropriate to grant conditional approval while deferring required findings to a subsequent approval stage, even where there will be a full public right to participate in the subsequent approval stage, where the initial decision has the effect of rendering the subsequent review moot or prevents meaningful review. However, where the initial decision has no legal or preclusive effect on the subsequent review, such conditional approval provides no basis for reversal or remand. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

1.5.1 Administrative Law – Requirement for Findings – Generally. A county may not rely on a written statement that was prepared by one of the county commission decision makers as findings where the written statement was not adopted by the board of county commissioners as findings. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

1.5.1 Administrative Law – Requirement for Findings – Generally. Although all legislative decisions need not be supported by findings when the local government can supply argument and citation to the record in its brief to demonstrate compliance with the applicable criteria, such arguments must be based on evidence contained in the record rather than created out of whole cloth. *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304 (2004).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government quasi-judicial land use decision maker is not legally required to verbally explain how all legal and evidentiary issues are resolved. It is the written decision that the decision maker ultimately adopts that is subject to LUBA’s review on appeal. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

1.5.1 Administrative Law – Requirement for Findings – Generally. Even absent a specific legal requirement that a legislative decision be supported by findings, remand may be necessary if LUBA and the appellate courts cannot perform their review function without the missing findings to determine whether applicable decision making criteria are satisfied. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

1.5.1 Administrative Law – Requirement for Findings – Generally. A decision maker may rely on environmental assessments and technical reports prepared and used by the decision maker in making its decision to demonstrate compliance with findings requirements, notwithstanding that the documents were not formally adopted as findings, where a reasonable person would understand that the decision maker intended to rely on the documents to support its decision. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

1.5.1 Administrative Law – Requirement for Findings – Generally. A city council’s decision to allow the prevailing party to draft proposed findings in support of a decision to rezone property provides no basis for reversal or remand. *Dimone v. City of Hillsboro*, 41 Or LUBA 167 (2001).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a city council interprets that a zone change criterion requiring a public need for the use proposed is met where there is a statistical probability that the segment of the population the proposed facility will serve will need the facility, LUBA will defer to that interpretation. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.5.1 Administrative Law – Requirement for Findings – Generally. The Portland City Code does not require that the city adopt findings of fact to support its legislative decisions. Therefore, on appeal to LUBA, the city may rely upon citations to the comprehensive plan, code, the record and arguments in its brief to demonstrate that the legislative decision is consistent with applicable plan and code provisions. *Home Depot, Inc. v. City of Portland*, 37 Or LUBA 870 (2000).

1.5.1 Administrative Law – Requirement for Findings – Generally. A city does not err by failing to address a comprehensive plan policy that requires an impact assessment for in-water structures, where the decision does not approve any in-water structures. *Marine Street LLC v. City of Astoria*, 37 Or LUBA 587 (2000).

1.5.1 Administrative Law – Requirement for Findings – Generally. The duty to coordinate under Goal 2 and ORS 197.015(5) does not mandate success in accommodating the needs or legitimate interests of all affected governmental agencies, but it does mandate a reasonable effort to accommodate those needs and legitimate

interests “as much as possible.” For LUBA to be able to determine that this coordination obligation has been satisfied, a local government must respond in its findings to “legitimate concerns” that are expressed by affected governmental agencies. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

1.5.1 Administrative Law – Requirement for Findings – Generally. Although there is no statutory requirement that legislative land use decisions be supported by findings, such findings may be required by local ordinance. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a local government decision appears to authorize a nonconforming use and additional dwelling without notice or findings to support those approvals, LUBA will remand the decision. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government's findings cannot defer a determination on discretionary approval criteria to a later stage without providing the same notice and comment period provided in the initial proceeding. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government cannot defer its obligation to make findings of compliance with applicable approval criteria to a state agency. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government may impose conditions necessary to ensure compliance with applicable water availability criteria only when the findings adequately establish that compliance with those criteria is feasible. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a zoning ordinance provision is an aspirational standard, a county need not make findings pertaining to the aspirational standard. *Sparks v. Tillamook County*, 30 Or LUBA 325 (1996).

1.5.1 Administrative Law – Requirement for Findings – Generally. The county must itself analyze and evaluate relevant facts in its findings to show how it reached its decision; it cannot do that analysis for the first time in its brief to LUBA. *DLCD v. Coos County*, 30 Or LUBA 229 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government is not required to make findings to address criteria that it has found to be inapplicable. *East Lancaster Neigh. Assoc. v. City of Salem*, 30 Or LUBA 147 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. While ORS 197.835(9) requires LUBA to affirm a local government decision in the absence of adequate findings if the parties identify evidence that “clearly supports” the decision,

"clearly supports" will be interpreted narrowly to mean "makes obvious" or "makes inevitable." *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. ORS 197.835(9)(b) and 197.829(2) authorize LUBA to remedy minor oversights and imperfections in local government land use decisions, but do not permit or require LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence, the preparation of adequate findings and the interpretation of comprehensive plans and local land use regulations. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no statutory or administrative law requirement that *all* legislative land use decisions be supported by findings. However, where a challenged legislative land use decision was made by the local governing body and the apparently applicable legal standards at issue on appeal are local comprehensive plan provisions, the interpretation of those provisions must initially be made by the governing body in its decision. *Central Eastside Industrial Council v. Portland*, 29 Or LUBA 429 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. When determining whether a nonconforming use exists, a local government's findings must determine whether the use of the subject property existing when restrictive regulations were applied was lawfully established, and the nature and extent of such use. *Nehoda v. Coos County*, 29 Or LUBA 251 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government may properly grant permit approval based on either (1) a finding that an applicable approval standard is satisfied, or (2) a finding that it is feasible to satisfy an applicable approval standard and the imposition of conditions necessary to ensure that the standard will be satisfied. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. While it is the applicants' burden to demonstrate compliance with relevant approval criteria, if a local government determines an approval criterion is not satisfied, it must adopt findings explaining why it believes the applicants failed to meet this burden. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no statutory or administrative law requirement that *all* legislative decisions be supported by findings. However, where there is a local code provision requiring that findings be adopted in support of legislative decisions, the absence of such findings, or the adoption of purely conclusory findings, can provide a basis for reversal or remand. *Foster v. Coos County*, 28 Or LUBA 609 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no generally applicable legal standard requiring a local government to have a "substantial or

reasonable basis" for declining to impose a condition proposed by a party to a local government land use proceeding. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where the challenged decision does not determine the proposal complies with mandatory approval standards applicable to the proposal or that compliance with such standards is feasible, the local government may not defer a determination of compliance with such standards to the city engineer, to be made in a process not involving notice or hearing. *Shapiro v. City of Talent*, 28 Or LUBA 542 (1995).

1.5.1 Administrative Law – Requirement for Findings – Generally. In order to defer determinations of compliance with mandatory approval standards to a later stage where no public hearing is contemplated, the local government must first determine that compliance with those standards is possible. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a challenged permit decision is not supported by any findings, the decision must be remanded. *Murphy Citizens Advisory Comm. v. Josephine County*, 28 Or LUBA 274 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. Aside from the requirement under *Dolan v. City of Tigard* for an "individualized determination" justifying a condition of approval imposing an exaction, there is no generally applicable requirement that conditions of land use approval be supported by findings that justify imposing the condition. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. That a legislative land use decision is not supported by findings is not, in itself, a basis for reversal or remand, because no applicable legal standard requires that *all* legislative land use decisions be supported by findings. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no legal requirement that a local government adopt findings to support a legislative land use decision. However, where the local government does not adopt findings explaining why a challenged legislative decision complies with applicable approval criteria, LUBA relies upon the responding parties to provide argument and citations to the record to assist the resolution of petitioners' allegations. *DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no legal requirement that local governments adopt findings in support of legislative land use decisions. Where a local government does not adopt findings explaining why a challenged legislative land use decision complies with applicable approval criteria,

LUBA relies on the responding parties to provide argument and citations to the record to assist in the resolution of petitioners' allegations. *Andrews v. City of Brookings*, 27 Or LUBA 39 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. For LUBA review of a legislative land use decision, either the legislative land use decision must be accompanied by findings addressing relevant legal standards or the local government must explain in its brief how the challenged legislative decision complies with applicable legal standards. *McInnis v. City of Portland*, 27 Or LUBA 1 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no requirement that a legislative land use decision redesignating numerous properties include findings specifically setting out the justification for the change in designation made for each affected property. *McInnis v. City of Portland*, 27 Or LUBA 1 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. Although nothing requires that all legislative land use decisions be supported by findings, in order for LUBA to perform its review function, it is necessary either that legislative land use decisions be accompanied by findings demonstrating compliance with relevant legal standards or that respondent explain in its brief how the challenged legislative decision complies with applicable legal standards. *Rea v. City of Seaside*, 26 Or LUBA 444 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a local government fails to adopt findings identifying and applying applicable criteria, it is not possible for LUBA to perform its review function. *Laine v. City of Rockaway Beach*, 26 Or LUBA 417 (1994).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where an approval standard requires that a proposed nonforest dwelling "not interfere seriously with the accepted forestry practices on adjacent lands," a local government must first determine what those accepted forestry practices are. Statements that "logging practices" which have occurred on adjacent properties are "logging" or "salvage logging" are not adequate descriptions of accepted forestry practices. *DLCD v. Klamath County*, 25 Or LUBA 355 (1993).

1.5.1 Administrative Law – Requirement for Findings – Generally. Even where a governing body's review of the decision of a lower level decision maker is limited to the evidentiary record below, the governing body must either make its own decision and findings regarding compliance with applicable approval standards, adopt by reference the decision and findings of the lower level decision maker, or in some other way take action such that a decision regarding compliance with applicable approval standards becomes final and subject to appeal to LUBA as part of the governing body's decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government decision approving a quasi-judicial zone change must be supported by written findings identifying the applicable criteria, setting out the facts relied on and explaining the reasons why the facts establish compliance with the applicable standards. *Strecker v. City of Spray*, 25 Or LUBA 264 (1993).

1.5.1 Administrative Law – Requirement for Findings – Generally. While nothing requires that all legislative land use decisions be supported by findings, in order for LUBA to perform its review function, it is necessary either that legislative land use decisions be accompanied by findings of compliance with relevant legal standards or that respondents explain in their briefs how the legislative decision complies with applicable legal standards. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 466 (1993).

1.5.1 Administrative Law – Requirement for Findings – Generally. Where a petitioner alleges a zoning map amendment violates plan policies and an LCDC administrative rule, a local government is obligated to adopt findings explaining either why the plan policies and rule do not apply to the disputed zone change or why the zone change is consistent with the plan policies and rule. *Recht v. City of Depoe Bay*, 24 Or LUBA 129 (1992).

1.5.1 Administrative Law – Requirement for Findings – Generally. A local government commits no error by failing to adopt findings addressing the impacts of a comprehensive plan transportation map amendment on an inventoried Goal 5 resource site, where the record shows the resource site is located outside the area affected by the challenged plan transportation map amendment. *Davenport v. City of Tigard*, 23 Or LUBA 565 (1992).

1.5.1 Administrative Law – Requirement for Findings – Generally. A challenged land use decision must contain findings addressing the applicable approval standards. *Veach v. Wasco County*, 23 Or LUBA 515 (1992).

1.5.1 Administrative Law – Requirement for Findings – Generally. There is no prohibition against a local government making a tentative oral decision on a permit application, followed by adoption of a final written decision containing its supporting findings. *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100 (1992).